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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate and Refine
Procurement Policies and Consider Long-Term
Procurement Plans.

Rulemaking 12-03-014
(Filed March 22, 2012)

**PETITION OF ICE BEAR SPV #1 LLC FOR MODIFICATION OF
DECISION 13-02-015**

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Dated: August 26, 2020

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Pursuant to Rule 16.4 of the Commission's Rules of Practice and Procedure, Ice Bear SPV #1 LLC (Petitioner) submits this Petition for Modification of Decision (D.) 13-02-015 and by a concurrently filed Motion for Interim Relief and Motion to Shorten Time seeks expedited action by the Commission. D.13-02-015 authorized Southern California Edison Company (SCE) to procure between 1400 MW and 1800 MW of capacity in the West Los Angeles subarea of the Los Angeles basin local reliability area in Track 1 of this proceeding.

I. INTRODUCTION

Petitioner Ice Bear SPV #1 LLC (Ice Bear) is the owner of sixteen (16) Energy Storage contracts that were awarded to Ice Bear in the request for offers (RFO) SCE conducted in response to D.13-02-015 and were subsequently approved by the Commission in D.15-11-041. The RFO authorized in D.13-02-015 was originally intended to meet a need forecasted to arise in 2021, and SCE was directed to procure between 1400 MW and 1800 MW of capacity in the West Los Angeles sub-area of the Los Angeles basis local reliability area, including 50 MW of energy storage resources, by 2021. This capacity was needed to meet expected long-term local capacity requirements resulting primarily from the retirement of generating plants using once-

through cooling (OTC), whose owners were faced with the choice of either complying with requirements set by the State Water Resources Control Board (Water Board) by no later than the end of 2020, or retiring the facility. At the time D.13-02-015 was issued in early 2013, retirement of about 4900 MW of capacity in the LA basin local area was expected.¹

In D.14-03-004, the Commission authorized SCE to procure an additional 500-700 MW by 2022 to compensate for the loss of generation resulting from the unexpected closure and retirement of San Onofre Nuclear Generation Station Units 2 and 3.

Modification of D.13-02-015 is needed now to account for three developments that were not foreseen in 2013, when the Commission authorized SCE to procure resources that include Petitioner's contracts.

First, the Commission in D.19-11-016 recommended an extension of the OTC compliance deadline for certain units in the LA basin local area—Alamitos Generating Station, Units 3-5, totaling approximately 1,200 MW, for up to three years; Huntington Beach Generating Station, Unit 2, approximately 200 MW, for up to three years; Redondo Beach Generating Station, Units 5, 6, and 8, approximately 850 MW, for up to two years; and Ormond Beach Generating Station, Units 1 and 2, approximately 1,500 MW, for up to one year. On September 1, 2020, the Water Board will consider its staff's recommendation to extend the OTC compliance for Alamitos, Huntington Beach, and Ormond Beach for three years, until December 31, 2023, and Redondo Beach for one year. If the Water Board adopts this recommendation, about 2,900 MW of capacity will be available for three years longer than projected in D.13-02-015.²

¹ D.13-02-015, p. 6. See also D.13-02-015, p. 42 ("At this time, it is reasonable to accept as a fact that, based on the information available today, OTC plants will close as per the [Water Board] schedule in Table 1").

² In D.19-11-016, the Commission also ordered load-serving entities to procure a total of 3,300 MW of System Resource Adequacy capacity, to come online in annual phases, beginning August 1, 2021.

Second, the COVID-19 epidemic and related closures and restrictions have significantly frustrated the ability of Petitioner, and likely other project developers, to develop its projects on the schedule contemplated when the energy storage contracts were negotiated and signed in 2014 and 2015. As explained below, Petitioner's storage technology requires close and repeated contact with potential customers, physical survey inspection of installed facilities, and numerous permits from local entities. The closure of many businesses, the need to observe social distancing, and closing or limited staffing of local permitting agencies have severely impacted and slowed the usual process for securing customers and installing facilities. As a result, Petitioner's ability to comply with contractual requirements to get the necessary resources online by the end of this year is threatened unless extensions are granted.

Third, and although not part of any governmental directive, the critical importance and potential benefit of the thermal energy storage technology that the Petitioner deploys was highlighted during the recent heat wave in California and the associated rolling blackouts and voltage reductions instituted by the California Independent System Operator's implementation of a Stage 3 emergency on August 14 – 16, 2020 and continued Flex Alerts during the week of August 17th with associated requests from utilities, including SCE, for customers to reduce peak load. The Ice Bear technology allows reduced energy usage from one of the largest sources of demand, commercial air conditioning, during the periods of highest electricity demand. If this reduced usage was needed during the depressed economic activity resulting from the pending pandemic, it will certainly be needed once the economy begins its return to normal.

II. COMPLIANCE WITH RULE 16.4

A. Rule 16.4(b)

Rule 16.4(b) requires petitioners to support factual allegations with references to the record in the proceeding or to matters that can be officially noticed, and to support allegations of new or changed facts with a declaration or affidavit.

Official notice of facts related to the existence and extent of the COVID-19 pandemic and the response of State and local governments to the pandemic may be taken under Rule 13.9 and section 451(f) and section 452(c) and (h) of the Evidence Code, as facts of generalized knowledge that cannot be reasonably be the subject of dispute (section 451(f)) or that are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy (section 452(h)), or as official acts of the executive department of California (section 452(c)). The Commission may also take official notice of the action of the Water Board on the OTC extensions on September 1, as an official act of the state's executive departments.

Allegations of new or changed facts are supported by the declaration of Brice Soucy, Attachment 1.

B. Rule 16.4(d)

Rule 16.4(d) requires an explanation of why a petition for modification could not have been filed within one year of the date of the decision that is sought to be modified. D.13-02-015 was issued on February 13, 2013. The events that compelled the filing of this Petition did not arise until February and March of 2020, as COVID-19 spread and the Governor issued Executive Order N-33-20. There was no reasonable way to forecast, by February 13, 2014 (one year from the issuance of D.13-02-015) that an unprecedented global pandemic would cause the

closing of businesses and government offices, and that Americans would be strongly encouraged to avoid physical proximity to other human beings.

C. Rule 16.4(e)

Rule 16.4(e) requires petitioners who were not a party to the proceeding in which the decision proposed to be modified was issued to state specifically how the petitioner is affected by the decision and why the petitioner did not participate in the proceeding earlier.

Ice Bear SPV #1 LLC is not a party to this proceeding. Ice Bear SPV #1 LLC was acquired by its current owners in June 2018 and reached commercial operation under its first contract with SCE in January 2019, and until that time Petitioner had no reason to be involved in the long-term procurement plan proceeding. The rapid spread of COVID-19, and more specifically Governor Newsom's March 19, 2020 issuance of Executive Order N-33-20, which in response to the public health emergency ordered Californians to shelter in place and subsequently shuttered businesses and government offices not required to maintain operations of Federal critical infrastructure sectors, resulted in delays that led Petitioner to explore ways to deal with the effects of COVID-19 while continuing to perform its immediate obligations as required under the contracts.³ Unfortunately, those efforts have not succeeded, despite reasonable mitigating efforts pursued by the Petitioner, including efforts to rely on remote communication and remote coordination whenever possible. Petitioner is affected by D.13-02-015 because the Decision established procurement deadlines that are not realistic or achievable for Petitioner's projects under the current circumstances.

³ Executive Order N-33-20. Available at: <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

III. WHY MODIFICATION OF D.13-02-015 IS JUSTIFIED

The rapid spread of COVID-19 in California was an unforeseeable event that resulted in significant delays in the development of the energy storage projects that Petitioner is pursuing in compliance with the requirements of the SCE contracts. The Commission has recognized the effects of the COVID-19 restrictions on utility customers, but those effects also extend to the development of energy storage resources.⁴ Additionally, in the Commission's Emerging Trends Commissioner Committee Meeting on June 17, 2020, Edward Randolph, Deputy Executive Director for Energy and Climate Policy, reported that the Commission had "Granted extensions of project deadlines for BTM [behind-the-meter solar and storage] projects that could not be installed due to shelter at home."⁵ Ice Bear has encountered directly comparable issues with installation of its equipment.

Petitioner employs the proprietary Ice Bear Energy Storage technology that integrates with the heating and cooling systems of commercial and residential structures to reduce the energy requirements for cooling. This thermal storage approach freezes water when energy prices are low (usually during periods of low system demand). It then conveys fluid cooled by the stored ice to the HVAC equipment for cooling purposes and thereby eliminates the usage of the HVAC's compressor when prices and demand are high, in accordance with strict contract requirements of SCE that specify the efficiency gain required to qualify, the time of use of the thermal storage system, and the locations (within two specific substations of SCE, Johanna and Santiago) that were expressly designated for siting such systems. By reducing or avoiding

⁴ The continuing effects of the COVID-related shutdowns are often unexpected and unpredictable. On August 13, for example, Pacific Gas and Electric Company asked for an extension of time to meet the notice requirements of Rule 3.2, because newspapers of record in some counties had ceased print publication due to the pandemic.

⁵ Available at:

<https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/Transparency/Commissioner_Committee_Meetings/etrend/2020/Edward%20Randolph%20Talking%20Points.pdf>.

cooling needs, Petitioner's technology can avoid significant energy use, especially during periods of high temperatures, resulting in significant savings for customers. For example, the Ice Bear commercial application shifts cooling load and significantly reduces peak load of air conditioning units. Because gas-fired generation is often called on to run during times of peak demand, the reductions in peak load the Ice Bear technology creates also reduce greenhouse gas and other emissions, while concurrently helping SCE avoid costly "last mile" substation and distribution system upgrades.

The Ice Bear Energy Storage technology approach requires the installation of the thermal storage equipment at the site where the cooling air will be distributed. These installations require repeated close contact between Petitioner's representatives and potential customers, to explain the technology and explore the site for possible locations for the equipment, and multiple permits from city and county governmental agencies, such as building and planning departments.

Installations required by the Petitioner's SCE contracts have been in operation since January 2019, and Petitioner has continued in 2019 and 2020 to pursue development activities for additional installations to meet the contractual requirements.

With the rapid expansion of COVID-19 infections and social distancing protocols, these activities have been significantly frustrated. Even if their businesses have not been completely shut down and despite the ability for remote communications in certain instances, potential commercial customers are understandably reluctant to meet in person with Petitioner's representatives, but these in-person meetings are necessary in the majority of sales processes for the customer to understand the technology and its benefits and to determine how and where the storage equipment can be installed. Even if Petitioner is able to obtain the customer's

agreement, Petitioner's ability to conduct physical survey inspections has been significantly impacted and limited due to local directives or customers' reluctance to provide access to their site due health concerns related to COVID-19. Lastly, local permitting processing times have slowed significantly, as governmental offices shut down and employees continue to work remotely, while certain permitting processes and procedures are challenging to complete remotely. Even if the offices remain open, there are frequently staffing shortages as employees quarantine, choose to take time off or work remotely, or become sick due to the virus. As a result, permits now take up to twice as long in our experience to obtain compared to pre-COVID-19 conditions.

The geographic area of Petitioner's focus is in the vicinity of SCE's Johanna and Santiago Substations in Orange County. Between March 12 and March 26, Petitioner's continuing development activities were curtailed by the issuance of 11 state and local directives, including the Governor's Executive Order directing all but essential personnel to shelter in place, and the Orange County order on March 26 that closed all non-essential businesses. As a result, Petitioner was unable to contact potential future customers and was unable to access the sites of planned installations for inspections or required surveys. COVID-19 has either delayed or significantly impacted 12 out of the 14 essential operational areas for these projects, as detailed in Attachment 2. As a result, development of 89% of potential sites previously identified by Petitioner has stalled.

The continuing restrictions required to combat the spread of COVID-19 have led Petitioner to the reluctant conclusion that it will be unable to meet the Project Completion Deadlines and other intermediate milestones specified in five of its contracts with SCE.

Petitioner accordingly proposes modifications to D.13-02-015 that are compelled by the continuing restrictions on activities necessitated by the persistence and spread of COVID-19.

Petitioner also notes that if the Project Completion Deadlines and intermediate contractual milestones are not extended in consideration of the effects of restrictions that the State and local governments have imposed, the result could be the termination of the five affected contracts held by Petitioner and other contracts held by similarly situated developers. Termination would mean that the capacity under the contracts would not be supplied to SCE or to the electric grid, during a period when energy shortages are again resulting in rolling blackouts. It is far preferable to allow the affected capacity to come online a few months later than originally scheduled in 2013, rather than never to begin serving California's electric customers.

IV. PROPOSED MODIFICATION

Petitioner asks the Commission to make the following modifications to D.13-02-015 (proposed additions are underlined).

- On p. 2, the first sentence of the first paragraph should be modified to read:

In this decision, we authorize Southern California Edison Company (SCE) to procure between 1400 and 1800 Megawatts (MW) of electrical capacity in the West Los Angeles sub-area of the Los Angeles (LA) basin local reliability area to meet long-term local capacity requirements (LCRs) by 2021 or as soon thereafter as permitted by the extension we authorize in consideration of the effects of the COVID-19 pandemic.

- On pp. 130-131, Ordering Paragraph 1 should be modified to read:

1. Southern California Edison Company shall procure between 1400 and 1800 Megawatts (MW) of electrical capacity in the West Los Angeles sub-area of the Los Angeles basin local reliability area to meet long-term local capacity requirements by 2021. Due to restrictions required to combat the spread of the COVID-19 virus, the Project Completion Deadlines for projects that were in development as of March 19, 2020, and other contractual deadlines that come due after March 19, 2020, shall be extended on a day-for-day basis by

the period between March 19, 2020, when Executive Order N-33-20 was issued by Governor Gavin Newsom, and the date upon which the county in which the project is located achieves Stage 3 reopening as defined by the State of California's Resilience Roadmap <<https://covid19.ca.gov/roadmap/>> and related guidance issued by the State, plus 60 calendar days for remobilization. Procurement must abide by the following guidelines:

- a. At least 1000 MW, but no more than 1200 MW, of this capacity must be from conventional gas-fired resources, including combined heat and power resources;
- b. At least 50 MW of capacity must be procured from energy storage resources;
- c. At least 150 MW of capacity must be procured from preferred resources consistent with the Loading Order of the Energy Action Plan;
- d. Subject to the overall cap of 1800 MW, up to 600 MW of capacity, beyond the amounts specified required to be procured pursuant to subparagraphs (a), (b) and (c) above, may be procured through preferred resources consistent with the Loading Order of the Energy Action Plan (in addition to resources already required to be procured or obtain by the Commission through decisions in other relevant proceedings) and/or energy storage resources.

The proposed modification of Ordering Paragraph 1 focuses on the Stage 3 reopening at the county level and reflects Petitioner's experience. However, this provision could be broadened to cover the delays that other project developers might report to the Commission.

In addition, as requested in the concurrent motion of Ice Bear SPV #1 LLC, the Commission should immediately issue a temporary extension of the contractual deadlines for projects, like those of Petitioner, that are delayed by the restrictions required to prevent the spread of the COVID-19 virus.

V. CONCLUSION

The COVID-19 pandemic is an extraordinary event that could not have been foreseen when the Commission issued D.13-02-015 or when SCE and Petitioner entered into

contracts to address forecasted capacity shortages in the West Los Angeles sub-area of the Los Angeles basin local reliability area. Confronted with the unique limitations required to contain the virus, this Petition proposes reasonable steps to respond to the delays resulting from various governmental and public health restrictions while progressing toward the ultimate completion of the projects required by all of Petitioner's contracts with SCE.

For the reasons stated in this Petition, Ice Bear SPV #1 LLC respectfully urges the Commission to grant its Petition and to modify D.13-02-015 as requested in this Petition.

Respectfully submitted this 26th day of August, 2020 at San Francisco, California

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By /s/ Brian T. Cragg
Brian T. Cragg

Attorneys for Ice Bear SPV #1 LLC

ATTACHMENT 1

DECLARATION OF BRICE SOUCY

I, Brice Soucy, am Authorized Representative for Ice Bear SPV #1 on behalf of its parent company ACP Thule Investments LLC, managed by Argo Infrastructure Partners. In that capacity, I have been involved with the oversight of the development efforts of Ice Bear SPV #1 LLC (Petitioner) to develop energy storage facilities in the service territory of Southern California Edison.

Ice Bear SPV #1 LLC employs the proprietary Ice Bear Energy Storage technology that integrates with the heating and cooling systems of commercial and residential structures to reduce the energy requirements for cooling. This thermal storage approach freezes water when energy prices are low (usually during periods of low system demand). It then conveys fluid cooled by the stored ice to the HVAC equipment for cooling purposes and therefore eliminates the usage of the HVAC's compressor when prices and demand are high. By reducing or avoiding cooling needs, the Ice Bear technology can avoid significant energy use, especially during periods of high temperatures, resulting in significant savings for customers. The Ice Bear commercial application shifts cooling load and significantly reduces the peak load demand of air conditioning units.

The Ice Bear Energy Storage technology approach requires the installation of the thermal storage equipment at the site where the cooling air will be distributed. These installations require repeated close contact between Petitioner's representatives and potential customers, to explain the technology and explore the site for possible

locations for the equipment, and multiple permits from city and county governmental agencies, such as building and planning departments.

With the rapid expansion of COVID-19 infections and social distancing protocols, these development activities have been significantly frustrated. Potential commercial customers are reluctant to meet in person with Petitioner's representatives, but these in-person meetings are necessary in the majority of sales processes for the customer to understand the technology and its benefits and to determine how and where the storage equipment can be installed. In addition, Petitioner's ability to conduct physical survey inspections has been significantly impacted and limited due to local directives or customer reluctance to provide access to their site due health concerns related to COVID-19. Lastly, local permitting processing times have slowed significantly, as governmental offices shut down and employees continue to work remotely, while certain permitting processes and procedures are challenging to complete remotely. Even if the offices remain open, there are frequently staffing shortages as employees quarantine, choose to take time off or work remotely, or become sick due to the virus. As a result, permits now take up to twice as long in our experience to obtain compared to pre-COVID-19 conditions.

The geographic area of Petitioner's focus is in the vicinity of SCE's Johanna and Santiago Substations in Orange County. Between March 12 and March 26, Petitioner's continuing development activities were curtailed by the issuance of 11 state and local directives, including the Governor's Executive Order directing all but essential personnel to shelter in place, and the Orange County order on March 26 that closed all non-essential businesses. As a result, Petitioner was unable to contact potential future

customers and was unable to access the sites of planned installations for inspections or required surveys. COVID-19 has either delayed or significantly impacted 12 out of the 14 essential operational areas for these projects, as detailed in Attachment 2. As a result, development of 89% of potential sites previously identified by Petitioner has stalled.

Due to the continuing restrictions required to combat the spread of COVID-19, Petitioner will be unable to meet the Project Completion Deadlines and other intermediate milestones specified in five of its contracts with SCE.

[Signature Page Follows]

I declare under penalty of perjury and under the laws of the State of California
that the foregoing is true and correct the best of my knowledge.

Executed on August 26, 2020, at Boston, Massachusetts.

Signed: Brian P. Soudy

- **Attachment 2 | Ice Bear Operational Impacts Summary**

#	Step	COVID-19 Impact
1	<u>On-site</u> customer meetings, demonstration of Ice Bear unit	Delayed / Impacted
2	Initial <u>on-site</u> visit / walk of the roof to gauge feasibility	Delayed / Impacted
3	<u>Site Acquisition</u> Customer feasibility, demonstration of technology, signs Letter of Intent and Participation Agreement	Delayed / Impacted
4	<u>On-site</u> electrical Surveys, equipment pictures	Delayed / Impacted
5	<u>On-site</u> structural Surveys	Delayed / Impacted
6	Feasibility is determined	Not Impacted
7	Third Party <u>on-site</u> inspection	Delayed / Impacted
8	Engineering Drawings are completed	Not Impacted
9	Permitting process with local city offices	Delayed / Impacted
10	Pre-construction <u>on-site</u> walk through	Delayed / Impacted
11	SCE <u>on-site</u> PIEIR inspection	Delayed / Impacted
12	Construction process (<u>on-site</u>)	Delayed / Impacted
13	SCE <u>on-site</u> PPIIR inspection	Delayed / Impacted
14	Start-up / onboarding process (<u>on-site</u>)	Delayed / Impacted